

# STATE CONTROLLER POLICY

## STATUTORY VIOLATIONS

### PROCESSING COMMITMENT VOUCHERS THAT VIOLATE STATE STATUTE

#### 1) Definitions

- a. **Statutory Violation** – Occurs when liabilities are incurred or payments made on the State's behalf without prior approval of a purchase order or a State contract when required under Fiscal Rule 2-2.
- b. **Ratification** – State Controller waiver of a statutory violation and acceptance of the purchase order or contract.

#### 2) Rule.

- a. **Statutory Violations** - The State Controller has authority to ratify statutory violations and allow payment for services already performed or goods already delivered. Statutory violations involving contracts require ratification and approval, and signature by the State Controller; delegates are not authorized to perform this function. Statutory violations involving purchase orders require ratification by the FAST Team
- b. **Expired Contracts** – Under contract law, contracts terminate when their term expires and the State Controller does not have authority to revive expired contracts. When a contract expires, the Agency or Institution of Higher Education shall prepare a new contract. Executing an option letter, amendment, or any other modification tool does not revive the contract, and is not permitted.

#### 3) Policies

- a. **Conditions for Ratification.** When a statutory violation occurs, the State Controller may, in his or her discretion, ratify an expenditure, in whole or in part, provided that all of the following conditions are met:
  - i. The prices or rates are fair and reasonable;
  - ii. The amount of the expenditure is within the unencumbered balance;
  - iii. The State Agency or institution of higher education (IHE) provides a written explanation in accordance with this policy; and
  - iv. The Parties did not act in bad faith or in a fraudulent manner.
- b. **Release of Payment.** Agencies and IHEs shall not release vendor payments prior to ratification by the State Controller.
- c. **Personal Obligation.** Statutory violations not ratified by the State Controller shall be the personal obligation of the person(s) who ordered the goods or services and/or incurred the obligation. See CRS §24-30-202(3).
- d. **Internal Controls.** All Agencies and IHEs are required to maintain an adequate system of internal controls to identify an occurrence, prevent or minimize violations, and implement this policy.
- e. **Notification of State Controller.** Agency and IHE chief fiscal officers shall notify the State Controller and request ratification of the commitment after reviewing the information related to a contract or purchase order statutory violation and are satisfied that the corrective action planned or taken is sufficient to prevent or minimize future occurrences. This notification shall be in the form of a memorandum or e-mail to the State Controller, and must include all of the following:
  - i. **Description.** Describe the commitment including:
    - 1. A description of the goods or services provided,
    - 2. The dollar amount,
    - 3. The date when the commitment arose,
    - 4. Whether disbursements have been made, and
    - 5. Provide copies of any relevant correspondence, documents, invoices, purchase orders, and contracts that define the terms of the commitment.
  - ii. **Explanation.** An explanation why the commitment arose before it was authorized, including the following information:
    - 1. The organizational unit and name and title of person or persons responsible,
    - 2. A description of internal controls and why controls did not prevent the situation from occurring, and
    - 3. A finding with supporting facts stating whether either Party acted in bad faith or fraudulently.

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- iii. **Evaluation.** Include an assessment of whether the prices or rates are fair and reasonable, and the basis for that conclusion. As appropriate, include State procurement procedures that were used and whether all other required approvals were obtained.
- iv. **Expenditure and Unencumbered Balance.** Confirm that the expenditure is within the unencumbered balance and that the agency or institution of higher education has the funds to pay for the commitment.
- v. **Preventative Measures.** Include measures planned to prevent reoccurrence of the violation. If similar violations have occurred in the past, explain what prior preventative actions were and why they have not worked.

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